

February 22, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0300478**

TIMOTHY SCHAEFER and/or SELLECK PROPERTIES, LLC
Code Enforcement Appeal

Location: 24424 Southwest 165th Street, Issaquah

Appellant: **Timothy R. Schaefer** and/or **Selleck Properties, LLC**
35620 Southeast 252nd Street
Ravensdale, Washington 98051
Telephone: (360) 886-1152

King County: Department of Development and Environmental Services (DDES)
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772
Facsimile: (206) 296-6604

SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal; grant extended period for compliance
Examiner's Decision:	Deny the appeal and extend the period for compliance to May 21, 2007

SUMMARY OF DECISION:

Code Enforcement Notice and Order is affirmed and appeal denied, with extension of time for compliance granted.

EXAMINER PROCEEDINGS:

Hearing opened:

February 5, 2007

Hearing closed:

February 13, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On November 23, 2006 the King County Department of Development and Environmental Services issued a “Notice of King County Code Violation: Civil Penalty Order: Abatement Order: Notice of Lien: Duty to Notify” (“notice and order”) to Timothy R. Schaefer and Selleck Properties, LLC. The property subject to the notice and order is located at 24414 Southwest 165th Street in unincorporated King County. Selleck Properties, LLC is the record owner of the subject property. Timothy R. Schaefer is authorized to act on behalf of Selleck Properties, LLC.

The notice and order alleged a violation of the King County code resulting from the use and occupancy of a mobile home that has been placed upon the property without final inspections and approvals, and occupancy without obtaining required fire suppression permit(s) and installation of a required fire suppression system.

A timely appeal of the notice and order was filed by Tim Schaefer for Selleck Properties, LLC.

2. The appellant asserts that the notice and order is arbitrary and capricious, is an erroneous interpretation of the facts and law, and is not supported by substantial evidence. The appellant also asserts that the notice and order should be barred by the statute of limitations and that it violates constitutional rights of the appellants, including the right to procedural due process.
3. A mobile home is situated on the subject property, for which a building permit was issued in 1997 to former owner Robert E. Schaefer. Review of the building permit application led to a county determination that installation of fire sprinklers would be required as a condition of final permit approval.

On or about January 25, 2002, a King County building inspector approved the placement of the mobile home on the site. That approval was issued in error, due to the failure of the building inspector (Kerry Gallow), to note that the required fire sprinklers had not been installed. On January 25, 2002, after the building inspector’s final approval, Robert E. Schaefer executed a deed of trust to National City Mortgage Company to secure a loan of \$179,200 on the subject property. Approval of the loan was dependent upon King County’s final approval of the building permit. Payments on the loan are currently \$1,543.40 per month.

During the week following January 25, 2002, King County building inspector Kerry Gallow sent an email to Robert E. Schaefer, stating that Gallow’s earlier final approval of the building permit on January 25, 2002 had been in error. The status of the permit at that time was changed to “not

finaled”. An extension of that permit was issued as permit no. B02X0074 in 2002. The current status of this permit is “not finaled”.

4. Robert Schaefer is now deceased. The subject property is being occupied by a tenant, who pays a rent of approximately \$1,200 per month.
5. The cost to install a fire sprinkler system in the subject property would be approximately \$12,000. The value of the mobile home on the property is approximately \$14,000.

CONCLUSIONS:

1. The use and occupancy of the mobile home on the subject property, without a final building permit inspection and approval, and without the issuance of a certificate of occupancy, is a violation of King County Code sections 16.02.460 and 16.04.960.
2. The King County Hearing Examiner does not have jurisdiction or authority to consider the defense of equitable estoppel to bar King County from enforcing provisions of the King County code.
3. There is no statute of limitations that applies to bar King County from enforcing the King County Code with respect to this violation. The Hearing Examiner does not have jurisdiction or authority to apply the doctrine of laches.
4. Ninety (90) days is a reasonable period of time to allow the appellant to take such action as is necessary to obtain final approval of the building permit and a certificate of occupancy, or to terminate the tenancy of the subject property so that it is no longer occupied. One hundred and fifty (150) days is a reasonable period to allow for the removal of the mobile home from the site if final approval of the building permit is not obtained.

DECISION:

The appeal of Timothy R. Schaefer and Selleck Properties, LLC is DENIED. The appellant is allowed until May 21, 2007 to obtain final approval of the building permit and a certificate of occupancy, or vacate the premises. The appellant is allowed until July 23, 2007 to remove the mobile home from the site if final approval of the building permit is not obtained. (DDES may recommend to the Hearing Examiner further extensions of time if DDES is satisfied that substantial progress is being made to complete the actions necessary to obtain final building permit approval and a certificate of occupancy)

ORDERED this 22nd day of February, 2007.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED via certified mail this 22nd day of February, 2007, to the following parties:

Timothy R. Schaefer/Selleck Properties, LLC
35620 Southeast 252nd Street
Ravensdale, Washington 98051

TRANSMITTED this 22nd day of February, 2007, to the following parties and interested persons of record:

Timothy Schaefer
Selleck Properties LLC
35620 SE 252nd St
Ravensdale WA 98051

Deidre Andrus
DDES/LUSD
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
MS OAK-DE-0100

Jo Horvath
DDES/BSD
MS OAK-DE-0100

Lamar Reed
DDES/LUSD
MS-OAK-DE-0100

Holly Sawin
DDES/LUSD
MS OAK-DE-0100

Toya Williams
DDES/LUSD
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE FEBRUARY 13, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0300478.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin, representing the Department and Appellant Timothy Schaefer.

The following Exhibits were offered and entered into the record:

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| Exhibit No. 1 | DDES staff report to the Hearing Examiner for February 5, 2007 |
| Exhibit No. 2 | Copy of the Notice & Order issued November 23, 2006 |
| Exhibit No. 3 | Copy of the Notice and Statement of Appeal received December 7, 2006 |
| Exhibit No. 4 | Copies of codes cited in the Notice & Order |
| Exhibit No. 5 | Cover pages of expired building permits, nos. B97R1437 and B02X0074 |
| Exhibit No. 6 | Photograph (1 color copy) of subject mobile home and carport taken June 9, 2004 |
| Exhibit No. 7 | Copy of "Notice – Do Not Occupy" placard posted 6-7-04 |

- Exhibit No. 8 Email to Mr. Schaefer from Kerry Gallo
- Exhibit No. 9 Inspection log for B02X0074
- Exhibit No. 10 Letter from Timothy Schaefer to Bob Wood dated January 15, 2002
- Exhibit No. 11 *Exendine v. City of Sammamish*, 237 Wn. App. 574, 113 P.3d 494
- Exhibit No. 12 Appellant's Outline of Defense Issues
- Exhibit No. 13 Deed of trust (pages 1, 2, 14 and 15 of 15, plus Exhibit "A" - legal description)
- Exhibit No. 14 2006 Mortgage Interest Statement from National City Mortgage for 24414 SE 165th Street, Issaquah

JNOC:gao
E0300478 RPT